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Supreme Court of the United States

OCTOBER TERM, 1954

No. 565

JACK WARREN BRADLEY,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Supreme Court of the United States

OCTOBER TERM, 1954

No.

JACK WARREN BRADLEY,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit affirming the judgment of the United States District Court for the Southern District of California, Central Division, convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported. It is printed as Appendix A to this petition (pages 11-21).

JURISDICTION

The judgment of the Court of Appeals was entered on December 29, 1954. (See Appendix B to this petition, page 22). The time for filing this petition for writ of certiorari expires January 28, 1955. This petition for writ of certiorari is filed within the time. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1). (See also Rules 37(b) (2) and 45(a), Federal Rules of Criminal Procedure.) The district court had jurisdiction under 18 U. S. C. § 3231.

QUESTIONS PRESENTED

I.

Whether petitioner was not given an opportunity to go through the induction ceremony and, therefore, is not guilty of refusing to submit to induction.

II.

Whether there was no basis in fact for the denial of the conscientious objector claim by the appeal board, making the final I-A classification arbitrary and capricious.

III.

Whether petitioner was deprived of a fair hearing before the appeal board because the recommendation of the Department of Justice was based on petitioner's belief in self-defense and the illegal conclusion that the belief was a merely personal moral code.

IV.

Whether Petitioner was denied his right to procedural due process when the appeal board acted upon the adverse recommendation made by the Department of Justice, without first giving him an opportunity to answer.

STATUTES AND REGULATIONS INVOLVED

Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. § 451(c))is involved. Also, Section 6(j) of the act must be considered (50 U. S. C. App. § 456(j), 65 Stat. 75, 83, 86). See also Section 12(a) of the act (50 U. S. C. App. § 462(a)).

Section 1622.1(d), 1622.14, 1624.2(b), 1626.25 and 1626.26 of the regulations (32 C. F. R. §§ 1622.1(d), 1622.14, 1624.2(b), 1626.25 and 1626.26) are involved. These are extensive provisions. They are printed as Appendix C, below, pages 22-29.

STATEMENT OF THE CASE

The Facts

Jack Warren Bradley was born September 18, 1932. [F 1, 11][1] He registered with his local board on September 20, 1950. [F 1-2] On September 14, 1951, he notified the local board of a change of address. [F 5] On September 24, 1951, the local board mailed the classification questionnaire to the wrong address. [F 3, 13-15] On October 5, 1951, the registrant wrote the local board that he had misplaced the questionnaire and requested another one. [F 13, 16] The local board mailed a duplicate questionnaire on October 8, 1951, along with special form for conscientious objector. [F 4, 6]

[1] Numbers appearing in brackets herein refer to pages of the printed Transcript of Record, except when "F" precedes the numbers. In that event the numbers appearing within brackets refer to the draft board file, received in evidence and marked as Government's Exhibit 1. Papers in the draft board file are numbered by a written longhand figure that is encircled.

The classification questionnaire was filed on October 26, 1951. [F 6] Bradley indicated he was a minister of religion but was not serving regularly as such and had not been formally ordained. [F 8] His occupation was repairing rails and distributing tie plates for the Great Northern Railroad. [F 9-10] He had completed elementary school and junior high school and had completed three years of high school but had not graduated. [F 11] He signed series XIV showing he was a conscientious objector. [F 12]

He filed a special form for conscientious objector on October 26, 1951. [F 18] He showed he was opposed to both combatant and noncombatant military service. [F 18] He believed in a Supreme Being and had obligations that were superior to those arising from any human relation. [F 18] He described the nature of his beliefs, showing he was not to take part in world affairs but must serve God rather than his country. [F 18] The basis of his religious training and belief was given. He relied on his mother for religious guidance. [F 19] He listed his preaching activity as a demonstration of the consistency of his religious convictions. [F 19] He gave his educational background, his various occupations and residences. [F 19-22] He gave the names of his parents and indicated his father's religion was Christian and his mother's was that of Jehovah's Witnesses. [F 22] He was a member of Jehovah's Witnesses and the Watchtower Bible and Tract Society, the legal governing body of his church. [F 22] He stated that such religious organization does not participate in any kind of war, either combatant or noncombatant. [F 22] He listed references to prove his sincerity. [F 23]

On January 22, 1952, the local board placed him in Class 1-A. [F 13, 27] This classification denied his conscientious objector status and made him liable to unlimited military service. He appealed and requested a personal appearance. [F 13, 30-34] Accompanying the letter was an affidavit proving his status as one of Jehovah's Witnesses. [F 28-29] The local board notified him to appear on February 11,

1952. [F 13, 35] He appeared, his case was reopened and he was again placed in Class I-A. [F 13, 36] The board made a memorandum finding that he had said he had made a pledge to serve God and could not move away from it and that he could not serve both God and country. [F 36-38] The local board notified him of the new classification. [F 13, 39] He appealed from such classification. [F 13, 40-42] On February 18, 1952, the file was forwarded to the appeal board. [F 13] The appeal board reviewed the file and made an entry that required the case to be referred to the Department of Justice for inquiry and hearing. [F 13] The file was forwarded to the United States Attorney on April 7, 1952. [F 43]

A secret FBI investigation and report thereon was made. There was a hearing before a hearing officer of the Department of Justice. [F 48-49] [32-32] The hearing officer made his report to the Department of Justice in Washington. On March 19, 1953, the Department made a recommendation to the appeal board against the conscientious objector claim, because petitioner would fight in self-defense, and his conscientious objector position was his own philosophy, and his objections were not deep-rooted religious convictions. [F 49] The Department of Justice recommended that the appeal board classify the petitioner in I-A. [F 49]

On April 9, 1953, the appeal board classified him in I-A, upon the recommendation of the Department of Justice. [F 50] He was notified of such classification on April 13, 1953. [F 13] He was thereupon ordered to report for induction on May 18, 1953. [F 13, 51] He reported as ordered. [25]

At the induction station he was told to take a new physical examination. He was fingerprinted. He was asked if he was a conscientious objector and if he didn't believe in fighting. [25] He was then sent to another room, where he gave his name and address. Then he was turned over to a sergeant who told him to write out a statement that he re-

fused to be inducted into the armed services. [26] Petitioner did so. [53, 55, 65] The sergeant told him the penalty for not submitting to induction. [26] The petitioner was never processed to the point of being requested to submit to induction. He was not put into the line-up of selectees. His name was not called, nor was he requested to take the symbolic one step forward, which is the induction ceremony whereby he would have been formally requested to enter the armed forces of the United States. [26]

At the trial petitioner testified that if he had been given an opportunity of taking the one step forward or going through the induction process he would not have stepped forward or submitted to induction. [32-33]

Form and History of Action

Showing Jurisdiction in District Court

The indictment charged petitioner with a violation of the Universal Military Training and Service Act. It was alleged that after petitioner registered and was classified he was ordered to report for induction. It was then alleged that on or about May 18, 1953, petitioner "knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do." [3-4]

Petitioner pleaded not guilty. [4] He waived the right of trial by jury. Findings of fact and conclusions of law were also waived. [5]

After receiving evidence and hearing testimony, the court considered a motion for judgment of acquittal made by petitioner. [7, 10, 36] The motion was denied. [37] The petitioner was convicted. [36] He was sentenced to serve a period of eighteen months in the custody of the Attorney General. [11-12] Notice of appeal was timely filed. [13] The transcript of the record (including the statement of points relied upon) has been timely filed in this Court.

REASONS FOR GRANTING THE WRIT

I.

The decision of the court below holding that there was basis in fact is in direct conflict with the holdings in other cases decided by other courts of appeals.—See *Williams* v. *United States,* 5th Cir., 1954, 216 F. 2d 350, 351-352; *Annett* v. *United States,* 10th Cir., 1953, 205 F. 2d 689; *United States* v. *Pekarski,* 2d Cir., 1953, 207 F. 2d 930; *Taffs* v. *United States,* 8th Cir., 1953, 208 F. 2d 329; *Jewell* v. *United States,* 6th Cir., 1953, 208 F. 2d 770; *United States* v. *Hartman,* 2d Cir., 1954, 209 F. 2d 366; *Pine* v. *United States,* 4th Cir., 1954, 212 F. 2d 93; *Weaver* v. *United States,* 8th Cir., 1954, 210 F. 2d 815; *Jessen* v. *United States,* 10th Cir., 1954, 212 F. 2d 897; *United States* v. *Close,* 7th Cir., 1954, 215 F. 2d 339; *United States* v. *Wilson,* 7th Cir., 1954, 215 F. 2d 443. Compare *Clark* v. *United States,* 9th Cir., December 3, 1954, — F. 2d — ; *Pitts* v. *United States,* 9th Cir., December 7, 1954, — F. 2d — ; *Affeldt* v. *United States,* 9th Cir., December 14, 1954, — F. 2d — ; *Ashauer* v. *United States,* 9th Cir., December 21, 1954, — F. 2d —.

It is submitted, therefore, that there is a direct conflict between the holding of the court below and the holding of other courts of appeals on this question. This gives a basis for granting the writ of certiorari.

II.

The case of petitioner was referred to the Department of Justice by the appeal board for appropriate inquiry and hearing. [F 43] There was a secret FBI investigation and report made. [F 48-49] There was a hearing before the hearing officer. The Department of Justice made its recommendation to the appeal board. [F 48-49] The Department recommended against the conscientious objections because the petitioner would fight in self-defense. The Department illegally, and contrary to the record, indicated

to the appeal board that petitioner's conscientious objections were based on his own philosophy and not on deep-rooted religious training and belief. [F 48-49] The appeal board adopted the recommendations of the Department of Justice and denied the conscientious objector classification. [F 50]

In the motion for judgment of acquittal it was contended that the recommendation of the Department of Justice was inconsistent with the facts. [9] The motion was denied. [6]

The court below held that the faulty recommendation of the Department of Justice was harmless error because the appeal board had previously denied his conscientious objector claim. The preliminary denial was for the purpose of referring the case to the Department of Justice and was not a final classification. The court below also held that there was nothing in the record to justify the conclusion that the recommendation was followed. This holding of the court is inconsistent with *Hinkle* v. *United States,* 9th Cir., Sept. 24, 1954, 216 F. 2d 8, now pending on petition for writ of certiorari in this Court (No. 448, October Term, 1954). The holding of the court below that the hearing officer concluded that Bradley had a personal philosophy and his beliefs were not based on religious training and belief is unsupported by the record. There is no conflicting evidence. The evidence showed indisputably that Bradley's belief came from religious training and belief and not from a personal moral code.

This presents a question of great public importance that ought to be decided by this Court.

III.

The final recommendation of the Department of Justice to the appeal board against the petitioner's conscientious objector claim was mailed to the appeal board without notice to the petitioner of the contents. [F 48-49] The petitioner did not have an opportunity to answer the adverse recommendation before the appeal board acted on it. [29]

On April 9, 1953, the appeal board classified petitioner I-A, denied the conscientious objector claim and accepted and relied on the recommendation of the Department of Justice without giving petitioner an opportunity to answer the adverse recommendation. [F 50]

In the motion for judgment of acquittal it was contended that the procedure denied petitioner's right to be heard before the appeal board finally classified him. It was contended that this procedure deprived him of his rights guaranteed by the act and the Constitution. [10]

This question is presented to this Court in *Gonzales* v. *United States,* No. 69, October Term, 1954.

IV.

Another important question of federal criminal law is whether the petitioner refused to submit to induction. This question has not been determined, but ought to be decided by this Court.

At the induction station petitioner was never requested to take the one step forward. The induction officials did not put him in the line-up with the other selectees, call out his name and request him to submit to induction. [25-26] He was merely requested to sign a statement that he refused to submit to induction. [26-32] When he signed this statement he was discharged. [25-26, 32-33] He testified that had he been requested to go through the induction ceremony, he would have refused to do so. [32-33]

In the motion for judgment of acquittal it was contended that the petitioner was never asked to submit to induction and therefore he is not guilty of refusing to submit to induction as charged in the indictment. [9] The motion for judgment of acquittal was denied. [6]

Suppose this were a conviction for murder. A defendant can be indicted for murder but he cannot be convicted of the offense merely because he has made a statement that he was going to commit the murder. It is necessary for a shot to be fired with malice aforethought and for death

to result from the shot in order for the corpus delecti to be established. The corpus delecti in the offense here was never established. The petitioner never committed the offense he was charged with in the indictment. He was never brought to the point of being requested to submit to induction. All that happened was that the induction officials did not complete the process. They merely took a statement from him and released him after he stated he refused to be inducted. The mere statement that a selectee refuses to submit to induction is not equivalent to the offense of refusal to submit to induction. The corpus delecti was not established in this case.

It is submitted that the holding of the court below on this question does not give effect to and is in conflict with an opinion by this Court.—*Billings* v. *Truesdell*, 321 U. S. 542 (1944).

V.

The questions presented in this petition are similar to those raised in *Simmons* v. *United States*, No. 251, October Term, 1954, and *Gonzales* v. *United States*, No. 69, October Term, 1954.

CONCLUSION

For the reasons above stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

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January, 1955.

APPENDIX A

Opinion of Court Below

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Jack Warren Bradley
Appellant,

vs.

United States of America,
Appellee.

No. 14,357
Dec. 29, 1954

Appeal from the United States District Court for the Southern District of California, Central Division.

Before: STEPHENS and FEE, Circuit Judges, and WALSH, District Judge

WALSH, District Judge

Bradley was convicted of violating the Universal Military Training and Service Act by knowingly failing and refusing to submit to induction into the armed forces of the United States. In this appeal, he attacks his conviction upon the several grounds which will be hereinafter stated and considered.

Bradley registered with his local board at Long Beach, California, on September 20, 1950, two days after his eighteenth birthday. On October 26, 1951, he filed with that

board his classification questionnaire, wherein he signed Series XIV certifying that he was a conscientious objector, and the special form for conscientious objectors, Selective Service System Form No. 150. In his answers to the questions in Form No. 150, appellant claimed to be opposed to both combatant and noncombatant military service. He stated that he believed in a Supreme Being and that such belief involved duties which to him were superior to duties arising from any human relation; and, to describe the nature of his beliefs, he said that he was not to take part in worldly affairs and that his duty was to serve God rather than his country. He explained that he was a member of Jehovah's Witnesses and that he relied upon his mother for religious guidance. He specified his attendance at religious meetings and his preaching activities as the actions and behavior in his life which demonstrated the consistency and depth of his religious convictions. He stated that he had never given public expression to his views as a conscientious objector. He listed the names and addresses of two relatives as references who could supply information as to the sincerity of his professed convictions against participation in war.

On January 22, 1952, the local board classified appellant as I-A (available for military service), whereupon appellant, by letter, appealed from the I-A classification and requested a personal appearance before the local board. With his notice of appeal, appellant submitted a letter[1] from one Conradi, Company Servant of the Simi Company of Jehovah's Witnesses, wherein Conradi stated that he had not been acquainted with appellant very long but, during their short acquaintance, appellant had been very faithful in preaching activity and in attending Company meetings and he was convinced of appellant's sincerity "as a Christian and a student of the ministry." Appellant appeared per-

[1] This document is erroneously styled an affidavit in appellant's brief. Its execution was acknowledged by Conradi before a Notary Public, but it was not sworn to.

sonally before the local board on February 11, 1952, and a memorandum regarding such appearance was made by the board and placed in appellant's file. Immediately following appellant's personal appearance, the local board again classified him as I-A and notified him of the new classification.

On February 18, 1952, appellant's file was forwarded to the appeal board and that body, after reviewing the file and determining that appellant should not be classified as either I-A-O (conscientious objector available for noncombatant military service only) or I-O (conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest), on April 7, 1952, referred the file to the Department of Justice for the purpose of obtaining an advisory recommendation from the Department. On August 7, 1952, appellant was given the regular pre-induction physical examination at the Armed Forces Examining Station in Los Angeles, with the result that he was found fully acceptable for induction into the armed services. On March 19, 1953, the Department of Justice made a written recommendation adverse to appellant's conscientious objector claim to the appeal board. In its recommendation, the Department summarized the results of an F.B.I. investigation of appellant and listed details of a hearing given appellant before a hearing officer of the Department. In the latter regard, mention was made of the fact that appellant told the hearing officer he would fight in self-defense and that his conscientious objector position was his own philosophy. The hearing officer was reported to have concluded that appellant was not a conscientious objector by reason of any deep-seated religious conviction but that, if his claim was sincere, it was only an outgrowth of his personal philosophy. The Department found the appellant's objections to combatant and noncombatant service were not sustained and recommended that his claim for exemption be denied, stating specifically that its finding was based upon a consideration of the entire file and record in the case.

On April 9, 1953, the appeal board classified appellant as I-A and he was notified of such classification on April 13, 1953. Thereafter, he was ordered to report for induction on May 18, 1953.

On the date fixed in the order, appellant reported at the induction station, where he was fingerprinted and given a new physical examination. The new examination resulted in his being again found acceptable for service. At this point, appellant was asked if he was a conscientious objector or one who didn't believe in fighting and he replied in the affirmative. Thereupon he was sent to a sergeant[2] in another room in the station, who explained to him the penalty for refusing to submit to induction. Appellant then, at the request of the sergeant, wrote and signed the following: "I refuse to be inducted into the Armed Services of the United States."[3] Appellant thereupon left the induction station. In due course, the authorities at the station and appellant's local board reported to the United States Attorney that appellant had refused to submit to induction. His indictment, trial and conviction followed.

Appellant's first contention is that since he was not given an opportunity to go through the precise induction ceremony required by army regulations (Army Special Reg-

[2] At the trial, appellant displayed complete unfamiliarity with the rank of the military personnel with whom he dealt at the induction station. He described one person with whom he talked as, "this corporal, or colonel or whoever it was." Thus while he testified that he "believed" it was a sergeant who requested him to write his statement and we are assuming the accuracy of his testimony on this point, the statement is witnessed by both a captain and a sergeant, and it may very well have been the captain who asked him to write the statement.

[3] At his trial, appellant testified that if he had been asked while at the induction station to take the usual "one step forward" to evidence and constitute his induction into the Armed Service, he would not have stepped forward or submitted to induction.

ulation No. 615-180-1),[4] he is not guilty of refusing to submit to induction. He concedes that the carrying through of the induction ritual would have been a vain and idle thing in his case because of his resolution not to submit, but he argues nevertheless that his refusal was somehow less a refusal because the ritual was not carried out in all of its fullness. We cannot agree.

Proof of the full, formal ceremony might be essential if we were asked to find that appellant had been transferred from a civilian to a military status, but we do not think the same requirement exists with regard to the question which confronts us now. *Billings v. Truesdell*, 321 U. S. 542; *United States v. Mansavage*, 7 Cir., 178 F. 2d 812, 818; *Corrigan v. Secretary of the Army*, 9 Cir., 211 F. 2d 293. It must be remembered that the issue here is not whether appellant was inducted into the armed forces, but whether he refused to be inducted. The evidence shows that appellant reported at the induction station and proceeded through the induction process to the point where it was determined finally that he was acceptable for service. All that remained was his induction or his refusal to be inducted. He was told the penalty for refusal to submit to induction, and he stated understandingly and positively that he would not submit.

The regulation providing for the formal "one step forward" had its origin in the difficulties and uncertainties which formerly plagued the military authorities as to

[4] Paragraphs 23 and 27 of the regulation are pertinent and they provide in substance: The induction officer is to assemble all the selectees, advise them that they are about to be inducted into the armed services and inform them that each is to take one step forward as his name is called and that such step will constitute his induction. If a selectee refuses to step forward when his name is called, the induction officer is to remove such selectee quietly and courteously from the presence of the group about to be inducted. The officer then explains to him that his refusal to submit to induction is a felony and that upon conviction therefor he may be punished by fine or imprisonment, or both. The induction officer is then to again request the selectee to take a step forward when his name is called. If the selectee again refuses to take the one step forward, the induction officer is to ask the registrant to make a signed statement, in his own handwriting, to the effect that he refuses to submit to induction.

whether, in fact, a selectee had taken the oath, *Corrigan v. Secretary of the Army*, supra; and it had for its object the separation with certainty of those who would not be inducted from those who would. Its relaxation in appellant's case in no manner prejudiced him.[5] He did, advisedly and unequivocally, what he came to the induction station to do —he refused to submit to induction.

The next contention advanced by appellant is that the appeal board had no basis in fact either for denying his claim for classification as a conscientious objector or for classifying him in Class I-A. He argues that the I-A classification given him by the appeal board[6] constituted arbitrary and capricious action on the part of the board and was, therefore, invalid; that without a valid classification to support it, the order to report for and submit to induction was a nullity; and that appellant's failure and refusal to obey the void order constituted no offense. We will preface our consideration of this facet of the case with a reference to certain principles which bear importantly upon it.

Under the Universal Military Training and Service Act, a deferment is not a matter of right but of legislative grace; and, accordingly, the burden is upon a registrant claiming exemption to establish clearly that he is entitled thereto. 32 C. F. R., Section 1622.1 (c); *Dickinson v. United States*, 346 U. S. 389, 395; *Richter v. United States*, 9 Cir., 181 F. 2d 591, 593; *United States v. Schoebel*, 7 Cir., 201 F. 2d 31, 32; *United States v. Wider*, D. C., E. D. N. Y., 119 F. S. 676, 682. A right to exemption as a conscientious objector is not established merely by proving affiliation with a particular religious sect, since it is the registrant's belief and his sin-

[5] Cf. *United States* v. *Hagaman*, 3 Cir., 213 F. 2d 86, 91.

[6] It is this classification with which we are here concerned. *Hinkle* v. *United States*, 9 Cir., 216 F. 2d 8; *Goetz* v. *United States*, 9 Cir., 216 F. 2d 270.

cerity therein, rather than the nature of the teachings of a religious faith, with which the draft board is ultimately concerned. *United States v. Simmons,* 7 Cir., 213 F. 2d 901, 904; *Gonzales v. United States,* 6 Cir., 212 F. 2d 71, 72. The very nature of the duty assigned to a draft board when it is required to pass upon a claim of conscientious objection, viz: the determination of what a man believes and the conviction with which he believes it, contemplates that the decision of the board will have as its basis not direct proof of objective facts, but inferences drawn from all of the evidence before the board. *American Communications Ass'n v. Douds,* 339 U. S. 382, 411. Logically, then, when a reviewing court is considering whether a board's denial of a conscientious objector claim in a given case had basis in fact, the board's action is entitled to the support of any inference of sham or insincerity on the part of the registrant which the board could have drawn validly and fairly from the record upon which it acted. *United States v. Simmons,* supra, at p. 906.

The record upon which the appeal board made its classification of Bradley consisted of the documents which we have described above, i.e., his classification questionnaire, Selective Service System Form No. 150, the Conradi letter, Bradley's letter requesting a personal appearance before the local board, the memorandum of his personal appearance, and the recommendation of the Department of Justice. Laying aside the Department recommendation, which was in accord with the appeal board's classification and which will be considered hereinafter, we search the balance of the record for support for the implicit finding of the appeal board of insincerity on the part of Bradley. *Dickinson v. United States,* supra, at p. 396.

In his classification questionnaire, appellant stated that he had been a minister of the Jehovah's Witnesses sect since March, 1947. In the Form No. 150, which was filed with the classification questionnaire, he was asked to state fully "When, where, and how" he became a member of

Jehovah's Witnesses and he answered: "I learned about truth in 1940—Long Beach, Calif. I learned from my mother and from study." Taken together, these answers would be understood only as representations that appellant had been affiliated with Jehovah's Witnesses since 1940 and that his attachment to and activity in the sect were of such degree by March, 1947, that he had reached the status of a minister. Significantly, though, appellant omitted any answer to the question in Form No. 150 asking the name, title, and present address of the pastor or leader of the church, congregation, or meeting where he customarily attended. Significantly, too, although Form No. 150 directed that it be answered fully, he failed to make any answer to the question asking under what circumstances, if any, he believed in the use of force.

On January 29, 1952, in his letter requesting a personal appearance after he had been classified by the local board as I-A, appellant gave a very different picture of his connection with Jehovah's Witnesses. After pointing out that his mother had been an active Witness for 12 years and had given him scriptural training during that time, he described his own relationship to the sect: "*Now* I am associated with Jehovah's Witnesses organization, and have been *active as a Witness for several months.*" (Emphasis supplied.) With his letter, he submitted the letter from Conradi,[7] the person whose name and address he had withheld when he was claiming long-time membership and ministerial status in Jehovah's Witnesses; and it, also, limited to the very recent past the claim of activity by appellant as a member of the sect. A comparison of this new information with other material in the draft board file made one thing plain—appellant's religious activity was coincident

[7] Incidentally, this was the only documentary evidence having an origin other than appellant himself which was ever submitted to the draft boards. In view of the boards experience with cases of Jehovah's Witnesses generally, the slenderness of this reed might well have been significant to the boards. *United States* v. *Simmons*, supra at p. 906.

with activity on the part of his local board toward determining his availability for military service.[8] From this record it could be inferred, fairly and validly, that Bradley's was a case, not alone of recent conversion, *Schuman v. United States*, 9 Cir., 208 F. 2d 801, 805, but of recent conversion glossed by an effort to withhold or disguise the true situation. Nor could the inference be avoided by putting down to inadvertence the defects and shortcomings in the Form No. 150, since appellant said of the form in his letter regarding his personal appearance, "I realize that I did not give much information on that form."

The appeal board could also have found support for its classification of appellant in the memorandum of his personal appearance before the local board, which was substantially a verbatim transcript of that proceeding. The purposes for which appellant was afforded the opportunity to appear were to permit him to discuss his classification with the board, to direct attention to information in his file which he felt the board had either overlooked or failed to weigh properly, and to present any new information which he believed would assist the board in determining his proper classification. Far from doing this, his principal contribution to the meeting was to answer the board's questions with questions of his own. It can be fairly said of his conduct and attitude that they fell considerably short of carrying the burden which was upon him to show good faith in his claim. On the whole record, we find that the appeal board had basis in fact for its classification of appellant.

Appellant next insists that the Department of Justice recommendation was illegal and that it so colored and affected the action of the appeal board in classifying him that it rendered the classification also illegal. The argument upon the point runs like this: The hearing officer found, contrary to law, that Bradley could not be a conscientious objector because he believed in the use of force for

[8] Bradley's classification questionnaire came to him about October 1, 1951.

self-defense. The hearing officer found, without any evidence to support the finding, that Bradley's conscientious objector claim, if it was sincere, was not based on any deep-rooted religious conviction but was only an outgrowth of his personal philosophy. The Department of Justice bottomed its recommendation on the improper findings of the hearing officer; and the appeal board, in turn, based its classification on the recommendation thus tainted by the hearing officer's findings.

But, to begin with, the hearing officer made no finding that Bradley's belief in the use of force for self-defense negatived his claim of conscientious objection.[9] He mentioned as a fact that Bradley would fight in self-defense, but he drew no conclusion from that fact adverse to the conscientious objector claim. Further, the hearing officer's finding that any conscientious objector claim of Bradley's was an outgrowth of his personal philosophy was supported by the interview with Bradley and, in fact, by Bradley's own statement to the hearing officer. True it is, that such evidence was in conflict with other evidence in Bradley's file, but a finding based upon conflicting evidence is a very different thing from a finding unsupported by any evidence. And, even if it were conceded that the last-mentioned finding of the hearing officer was unsupported, it would be of no aid to appellant because the Department of Justice recommendation, by its own terms, was based not on such finding but upon "consideration of the entire file and record."

Finally, even if we agreed that the Department of Justice recommendation was based upon an erroneous finding that appellant's concientious objector claim was not based on religious conviction, we could not agree that the appeal

[9] This fact constitutes a major difference between our case and *Shepherd* v. *United States*, 9 Cir., (No. 14,105, decided December 13, 1954). In Shepherd, the hearing officer ruled that a belief in the right of self-defense and in the righteousness of theocratic warfare necessarily negatived a conscientious objection.

board's classification was invalid for that reason. Before the appeal board referred the case to the Department, it had itself reviewed the entire file and determined that Bradley was not a conscientious objector. We must assume that when the board received the Department report it was given consideration;[10] but there is nothing in the record which would justify us in finding that the recommendation was followed. To the contrary, what the record shows is that the board reaffirmed its earlier determination as to Bradley's conscientious objector claim after notice that the Department of Justice was in accord.

One additional point remains to be considered. Appellant asserts that the appeal board denied him due process of law by not giving him an opportunity to answer the recommendation of the Department of Justice before finally classifying him. We find no merit in this contention. *Gonzales v. United States,* supra; *White v. United States,* 9 Cir., 215 F. 2d 782, 787. Although the *White* case involved an alleged deprivation of due process by a refusal of access to the F.B.I. investigative report, the court's reasoning in that case and its exposition of the true function of the Department of Justice in selective service cases compel the conclusion that there was no denial of due process here.

The judgment of the court below is affirmed.

[10] 50 U. S. C. App., Sec. 456(j); Selective Service System Regulations, Sec. 1626.25(e); 32 C. F. R. Sec. 1626.25(e).

APPENDIX B

Judgment

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Jack Warren Bradley, *Appellant,*		
vs.		No. 14,357
United States of America, *Appellee.*		

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted:

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

(Endorsed) Judgment
Filed and entered December 29, 1954.

APPENDIX C

Statutes and Regulations Involved

Section 1(c) of the Act

Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. § 451(c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared gen-

erally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, § 1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, § 1(a) 65 Stat. 75.

Section 6(j) of the Act

Section 6(j) of the act (50 U. S. C. App. § 456(j), 65 Stat. 75, 83, 86) provides:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if

such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) of the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.—50 U. S. C. App. § 456(j), 65 Stat. 75, 83, 86.

Section 12(a) of the Act

Section 12(a) of the act (50 U. S. C. App. § 462(a), 62 Stat. 622) provides:

". . . Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ."

Section 1622.1(d) of the Regulations

Section 1622.1(d) of the Selective Service Regulations (32 C. F. R. § 1622.1(d) (E. O. 9988, 13 F. R. 4853; E. O. 10292, 16 F. R. 9862, Sept. 28, 1951)) provides:

"(d) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each such registrant shall receive equal justice."

Section 1622.14(a) of the Regulations

Section 1622.14(a) of the Selective Service Regulations (32 C. F. R. § 1622.14(a) (E. O. 10292, 16 F. R. 9862, Sept. 28, 1951)) provides:

"Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces."

Section 1624.2(b) of the Regulations

Section 1624.2(b) of the Selective Service Regulations (32 C. F. R. § 1624.2(b) E. O. 9988, 13 F. R. 4874, Aug. 21, 1948, redesignated at 14 F. R. 5021, Aug. 13, 1949) provides:

"(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary."

Section 1626.25 of the Regulations

Section 1626.25 of the Selective Service Regulations (32 C. F. R. § 1626.25 (E. O. 9988, 13 F. R. 4874, Aug. 21, 1948, as amended by E. O. 10292, 16 F. R. 9862, Sept. 28, 1951)) provides:

"*Special provisions when appeal involves claim that registrant is a conscientious objector.*—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to non-

combatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class. If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that class.

"(2) If the appeal board determines that such registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find that the registrant is eligible for classification in Class I-O, it shall place him in that class.

"(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file

so forwarded shall be returned, unless in the 'Minutes of Action by Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in paragraph (a) (2) or (4) of this section.

"(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrants. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant both the letter containing the recommendation of the Department of Justice and the report of the Hearing Officer of the Department of Justice."

Section 1626.26 of the Regulations

Section 1626.26 of the Selective Service Regulations (32 C. F. R. § 1626.26 (E. O. 9988, 13 F. R. 4874, redesignated at 14 F. R. 5021, Aug. 13, 1949)) provides:

"*Decision of appeal board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; *provided,* that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."